FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 584/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 13, 2007.

Heard Shri Gupta for the appellants, and Shri Kotwal for the respondents.

The appellants are the original defendants. A suit was filed by the respondents seeking for permanent injunction restraining the appellants/defendants from obstructing their right of way through the fields of the defendants.

Both the Courts held that there was a customary right of way through the fields belonging to the defendants.

It is not in dispute that the plaintiffs had purchased the suit property in the year 1993. The suit was instituted in the year 1994. The defendants were cultivating the field of the predecessor-in-title of the plaintiffs since the year 1984, till the plaintiffs purchased the suit field in the year 1993. The defendant had admitted in his cross-examination that he had not obstructed the way of the plaintiffs

through the suit fields from 1984 to 1993. Thus, it is apparent from the cross-examination that there was a customary right in favour of the plaintiffs to use the suit way for taking their carts and cattle.

Both the Courts have recorded concurrent findings of fact that the plaintiffs have proved the customary right to pass through the fields of the defendants and the appellate Court has further held that the plaintiffs have a right to pass through the disputed way throughout the year.

The findings recorded by both the Courts do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP